

Electronically Filed: 6/28/18

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Attorneys for Double Diamond Distribution, Ltd.

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re

U.S.A. DAWGS, INC.,

Debtor.

Case No. BK-S-18-10453-LEB

Chapter 11

**NOTICE OF FILING OF DECLARATION  
OF MATTHEW BERKOWITZ, FILED IN  
SUPPORT OF MOTION TO REMOVE  
CERTAIN LITIGATION CLAIMS FROM  
THE LIST OF ASSETS BEING SOLD AT  
THE JUNE 29, 2018 AUCTION OF  
DEBTOR'S ASSETS OR, IN THE  
ALTERNATIVE, FOR THE  
APPOINTMENT OF A CHAPTER 11  
TRUSTEE TO DETERMINE VALUES  
AND BEST USE OF DEBTOR'S  
LITIGATION CLAIMS**

DATE: June 28, 2018

Time: 1:30 p.m.

Place: Foley Federal Building  
300 Las Vegas Boulevard South  
Courtroom: 3  
Las Vegas, NV. 89101  
Hon. Judge Laurel E. Babero

1 Double Diamond Distribution, Ltd. hereby files the Declaration of Matthew Berkowitz,  
2 filed in support of its Motion to Remove Certain Litigation Claims from the List of Assets Being  
3 Sold at the June 29, 2018 Auction of Debtor's Assets, or in the alternative, for the Appointment of  
4 a Chapter 11 Trustee to Determine Values and Best Use of Debtor's Litigation Claims.

5 DATED this 28th day of June, 2018

6 DANNING, GILL, DIAMOND & KOLLITZ, LLP  
7

8 By /s/ Uzzi O. Raanan  
9 UZZI O. RAANAN  
10 Attorneys for Double Diamond Distribution, Ltd.  
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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re  
U.S.A. DAWGS, INC.,  
Debtor.

Case No. BK-S-18-10453-LEB

Chapter 11

**DECLARATION OF MATTHEW  
BERKOWITZ, FILED IN SUPPORT OF  
MOTION TO REMOVE CERTAIN  
LITIGATION CLAIMS FROM THE LIST  
OF ASSETS BEING SOLD AT THE JUNE  
29, 2018 AUCTION OF DEBTOR'S  
ASSETS OR, IN THE ALTERNATIVE,  
FOR THE APPOINTMENT OF A  
CHAPTER 11 TRUSTEE TO  
DETERMINE VALUES AND BEST USE  
OF DEBTOR'S LITIGATION CLAIMS**

DATE: June 28, 2018  
Time: 1:30 p.m.  
Place: Foley Federal Building  
300 Las Vegas Boulevard South  
Courtroom: 3  
Las Vegas, NV. 89101  
Hon. Judge Laurel E. Babero

1 I, Matthew Berkowitz, hereby declare as follows:

2 1. I am over the age of 18 and am mentally competent to make this declaration.

3 2. I submit this declaration in support of Double Diamond Distribution, Ltd.'s  
4 ("Double Diamond") Motion to Remove Certain Litigation Claims From the List of Assets Being  
5 Sold at the June 29, 2018 Auction of Debtor's Assets or, in the Alternative, for the Appointment of  
6 a Chapter 11 Trustee to Determine Values and Best Use of Debtor's Litigation Claims, filed  
7 concurrently herewith.

8 3. I have personal knowledge of the facts in this declaration.

9 4. If called upon as a witness, I could testify competently to these facts.

10 5. I am a partner in Shearman & Sterling LLP's litigation practice. I primarily work  
11 out of the firm's Menlo Park, California office. I am admitted to practice in both New York and  
12 California.

13 6. My practice focuses mainly on patent, copyright, trademark, trade secret, and false  
14 advertising litigation in federal district courts and the International Trade Commission (ITC), as  
15 well as post-grant proceedings in the US Patent and Trademark Office.

16 7. I am a Registered Patent Attorney with the United States Patent and Trademark  
17 Office.

18 8. I have extensive experience representing clients in major intellectual property and  
19 false advertising litigation matters, including, among others:

20 a. Representing Airbus S.A.S. before the Federal Circuit in an appeal from an  
21 inter partes reexamination. I argued the appeal, resulting in a precedential opinion in Airbus's  
22 favor. Airbus S.A.S. v. Firepass Corp. (Fed. Cir. July 17, 2015). I also argued several appeals for  
23 Airbus before the Patent Trial and Appeal Board, wherein the Board affirmed the rejection of all  
24 asserted claims.

25 b. Lead counsel to Toyota Motor Corporation in five *inter partes* review  
26 proceedings before the Patent Trial and Appeal Board.

27 c. Representing Toyota Motor Corporation in related patent litigation cases  
28 originally involving 24 patents in the U.S. District Court Eastern District of Texas.

1 d. Representing Elpida Memory Inc. in multiple patent litigation matters  
2 spanning district court actions and an ITC investigation.

3 e. Representing Sony as a complainant in a seven patent ITC investigation  
4 concerning mobile telephones.

5 f. Representing Amersham Health, Inc. in a multi-billion dollar false  
6 advertising case against Bracco Diagnostics, Inc. in the U.S. District Court for the District of New  
7 Jersey that involved more than 30 days of trial and approximately 40 testifying witnesses.

8 g. Lead counsel for Price f(x) Inc. and Price f(x) AG in litigation in the U.S.  
9 District Court for the Northern District of California involving 5 patents, trade secret claims,  
10 copyright infringement claims, and unfair competition claims.

11 h. Representing US Endodontics, LLC in patent litigation in the U.S. District  
12 Court for the Eastern District of Tennessee and post-grant proceedings before the Patent Trial and  
13 Appeal Board against Dentsply International, Inc., including a successful preliminary injunction  
14 defense.

15 i. Lead counsel for independent filmmaker Damian Kolodiy as plaintiff in a  
16 copyright infringement and false advertising litigation in the U.S. District Court for the Southern  
17 District of New York.

18 9. Shearman & Sterling has approximately 125 U.S.-based litigators, with a dedicated  
19 Intellectual Property (IP) litigation team. Specifically relevant to the Crocs Litigation, the  
20 attorneys in my firm have significant patent and false advertising litigation experience, including,  
21 for example, the above matters.

22 10. My firm is interested in representing U.S.A. Dawgs, LLC ("Debtor") and Double  
23 Diamond with regard to their various litigation claims against Crocs, Inc. ("Crocs") in *Crocs, Inc.*  
24 *v. Effervescent, Inc. et al.*, 06-cv-00605 (D. Col.) and other cases consolidated therewith  
25 (collectively, "Crocs Litigation").

26 11. Before the Debtor filed for bankruptcy, I and other attorneys from my firm reviewed  
27 voluminous pleadings and financial records related to the Crocs Litigation. In fact, our attorneys  
28 visited the Debtor's offices on multiple occasions and collectively spent nearly 100 hours on

1 diligence. Thereafter, Shearman & Sterling made a proposal to represent the Debtor and Double  
2 Diamond in the Crocs Litigation.

3 12. Shearman & Sterling would still be willing to represent the Debtor and Double  
4 Diamond in the Crocs Litigation on a hybrid contingency fee basis, as long as sufficient funds are  
5 available to pay necessary litigation costs (such as expert witness fees, discovery costs, etc.) and a  
6 discounted monthly fee, to be negotiated.

7 I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct.

9  
10 Executed on June 28, 2018.

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MATTHEW BERKOWITZ